

**MEMORANDUM OF UNDERSTANDING**  
**Between the**  
**Wisconsin Department of Public Instruction (DPI)**  
**and the**  
**Wisconsin Department of Health and Family Services (DHFS)**  
**July 1, 2008 - June 30, 2010**

**1. Purpose**

Public law 108-265, The Child Nutrition and WIC Reauthorization Act of 2004, requires that all schools participating in the National School Lunch (NSLP) or School Breakfast Programs (SBP) shall, at least twice during each school year, obtain a food safety inspection conducted by a state or local governmental agency responsible for food safety inspections. DPI and DHFS enter into this Memorandum of Understanding (MOU) in order to coordinate such inspections, to implement and monitor a school food safety program and to assist schools in complying with health standards in Wis. Admin. Code ch. HFS 196.

**2. Agency Authority**

2a. DPI may contract for the operation and maintenance of school lunch and breakfast programs under Wis. Stat. § 115.34 and § 115.341.

2b. DHFS and its agent local health departments (hereinafter, "agent" or "agents") inspect and issue permits for restaurants under Wis. Stat. ch. 254, subch. VII. The statutes currently exempt from licensing as a restaurant any public or private school lunchroom for which food service is directly provided by the school. DHFS enters into this MOU to establish food protection measures for the health, safety and welfare of the public, under the authority granted in Wis. Stat. § 254.62(1) and § 250.04(1).

**3. Applicability**

3a. This MOU applies to all Wisconsin elementary and secondary schools, schools for visually and hearing impaired, residential group homes, and juvenile detention facilities participating in the NSLP or SBP.

3b. Both agencies will continue to work cooperatively with local health departments to assist those schools affected by this MOU in achieving compliance with changes in the National School Lunch Act, 42 U.S.C. 1758.

- 3c. This MOU will not supersede established DPI school food service requirements so long as food safety inspections are conducted at least twice per State fiscal year (July 1<sup>st</sup> – June 30<sup>th</sup>). Because Federal law recognizes that certain local health departments conduct voluntary annual health inspections, this MOU is not intended to interfere with established inspection agreements between school districts and local health departments provided two inspections are completed annually.

#### **4. Licensure Considerations**

- 4a. Wis. Stat. § 254.61(5)(c) exempts from licensing as a restaurant any public or private school lunchroom for which food service is directly provided by the school.
- 4b. A public or private school selling meals to organizations or institutions not associated with the school or school district, including but not limited to licensed daycare or adult daycare, Head Start, senior centers, or public or private schools, shall be licensed as a restaurant unless the public or private school selling the meals is receiving two annual inspections as a result of participation in the NSLP or SBP. DHFS – Division of Public Health – Bureau of Environmental and Occupational Health - Food Safety and Recreational Licensing Section shall maintain a current written policy with DHFS – Division of Children and Family Services – Bureau of Regulation and Licensing permitting day care facilities licensed under Wis. Admin. Code ch. HFS 46 to procure meals from a school inspected under this MOU in lieu of a food source prescribed in Wis. Admin. Code § HFS 46.06 (9) (c) 3. A copy of this policy will be available to DPI upon request.
- 4c. Vending machines, which are operated by a school food service receiving two annual inspections as part of the NSLP or SBP, and which provide meals solely to students, faculty and school employees, shall be exempt from licensing under Wis. Admin. Code ch. HFS 198, based on approved comparable compliance under Wis. Admin. Code § HFS 198.02(2), provided they are inspected during the NSLP/SBP inspections. School vending machines, which are used for purposes other than providing meals under the NSLP or SBP, or are operated other than by the school food service, shall meet the requirements prescribed in HFS 198.

#### **5. Requirement for Food Safety Inspection**

As amended by Section 111 of Public Law 108-265, the Child Nutrition and WIC Reauthorization Act of 2004, Section 9(h) of the Richard B. Russell National School Lunch Act (42 U.S.C. § 1785(h) specifies the food safety inspection requirements this MOU seeks to implement as follows:

- (h) Food safety.

(1) In general. A school participating in the school lunch program under this Act [42 USCS § 1751 et seq.] or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) shall--

(A) at least twice during each state fiscal year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections;

(B) post in a publicly visible location a report on the most recent inspection conducted under subparagraph (A); and

(C) on request, provide a copy of the report to a member of the public.

(2) State and local government inspections. Nothing in paragraph (1) prevents any State or local government from adopting or enforcing any requirement for more frequent food safety inspections of schools.

(3) Audits and reports by States. For each of fiscal years 2006 through 2009, each State shall annually--

(A) audit food safety inspections of schools conducted under paragraphs (1) and (2); and

(B) submit to the Secretary a report of the results of the audit.

(4) Audit by the Secretary. For each of fiscal years 2006 through 2009, the Secretary shall annually audit State reports of food safety inspections of schools submitted under paragraph (3).

(5) School food safety program. Each school food authority shall implement a school food safety program, in the preparation and service of meals served to children, that is based on Hazard Analysis and Critical Control Point principles and conforms with guidance issued by the U.S. Department of Agriculture.

## **6. Inspection of School Food Service Facilities**

6a. Except as provided under 6b, DHFS or its agents will attempt to conduct a minimum of two inspections based on Wis. Admin. Code ch. HFS 196 requirements, while school is in session, each State fiscal year (July 1<sup>st</sup>-June 30<sup>th</sup>), of every school food service facility participating in the NSLP or SBP as defined by 7 CRF § 210.2 and 7 CFR § 220.2. DHFS or its agent will conduct inspections in a manner consistent with proper food safety procedures as defined in the Wisconsin Food Code. Per the newly established protocol, the food safety plan review is incorporated into at least one of the inspections.

6b. DHFS or its agent will complete a written report for each school food service facility inspection and provide a copy to the school food authority at the time of the inspection. If during an inspection the school food service facility has not implemented the required food safety plan, DHFS or its agent will notify DPI.

6c. Inspection reports will be made available to DPI from DHFS or its agent upon request.

6d. DHFS or its agent may assess a fee for each inspection completed under this MOU. DHFS's fees for the inspection of food preparation areas shall be consistent with the licensing fees of full service "moderate" restaurants specified in Wis. Admin. Code § HFS 196.04(2) (c) 2. Fees for the inspection of satellite facilities or schools receiving

meals from an inspected food preparation area shall be consistent with the licensing fees of a "pre-packaged restaurant" as defined in HFS 196.03(4m).

Pursuant to the DHFS - Food Safety and Recreational Licensing Section Policy Memo, "Definition of a Satellite School for Establishment of Fees," the definition of "satellite kitchen" is as follows:

*"A **satellite** kitchen will do no actual food preparation. Activities that are permitted include reheating and/or holding cooked food that has been delivered from the **production** kitchen, storage of cold ready-to-eat (RTE) items, and portioning and serving bulk products either delivered from the **production** kitchen or requiring no preparation.*

- 6e. DHFS's agent shall have the right to negotiate inspection fees with the local school districts within the agent's jurisdiction. The agent's fee shall not exceed the cost of the inspection service.
- 6f. DHFS or its agent shall notify DPI of any unresolved critical food safety issues, including orders to correct or cease operating pending compliance and correction, and shall notify DPI of any resolutions to these issues.
- 6g. DHFS or its agent shall provide, to the extent that resources are available, training for food service employees. DHFS or its agent will recommend corrective actions based on Wis. Admin. Code ch. HFS 196.

## **7. Records**

- 7a. Under this MOU and in accordance with 7 CFR § 210.9(b) (17) and § 220.7(e) (13), school food service inspection records shall be maintained for three years plus the current year. The Child Nutrition and WIC Reauthorization Act of 2004 require that the most recent inspection report be publicly posted and provided to the public upon request.
- 7b. Records shall include the name and address of the school food service facility, the name of the person in charge on premises, the name of the authorized representative, the name of the school food authority, inspection findings, the response from the school food authority and DHFS's or its agent's response to the school food service authority.
- 7c. DHFS and its agent performing the school food service inspections shall retain copies of the current report plus the records for the previous three years.

## **8. Investigation of Complaints Against School Food Service Operations**

- 8a. Complaints received by DHFS or its agent regarding any school inspected under this MOU shall be investigated in a timely manner. DHFS or its agent shall investigate complaints made against a school and notify the school food authority of the complaints and the findings.

8b. All complaints received by DPI under this MOU shall be forwarded to DHFS and its agent for investigation.

8c. Unresolved complaints of a critical nature shall be forwarded to DPI.

## **9. Conflict Resolution**

- DPI and DHFS and/or DHFS's agent shall meet with the local school food authority to resolve conflicts that may arise from the implementation of this MOU.

## **10. Joint Development of Policies and Procedures**

10a. DPI and DHFS will cooperate in the development of policies and procedures related to food safety inspection of, and compliance by, participating schools and other entities.

10b. DHFS and DPI intend to explore legislation to codify the policies and procedures related to food safety inspection of schools and other entities that participate in the NSLP and SBP, as time and resources permit.

## **11. Revisions**

11a. DPI and DHFS will review this MOU prior to the expiration date to determine whether it should be revised or canceled.

11b. The agencies may, at any time, amend this MOU or replace it with a MOU signed by the secretary and state superintendent.

## **12. Cancellation**

- DPI or DHFS may terminate this MOU upon 90 days advance written notice to the other party.

## **13. Signatures**

The undersigned, as the duly-authorized representatives of their respective agencies, hereby agree to the terms of this Memorandum of Understanding.

Wisconsin Department of Public  
Instruction

Wisconsin Department of Health  
and Family Services

Dated: July 17, 2008

Dated: 8/12/08

By: Suzanne Linton  
Suzanne Linton  
Director of Management Services

By: Thomas L. Sieger  
~~Karen Timberlake~~ Thomas L. Sieger  
~~Secretary~~ Deputy Division Administrator  
Division of Public Health